

General Information Letter: Bulk sales notification requirements do not apply to transfers under federal bankruptcy court proceedings.

April 4, 2001

Dear:

A copy of your letter to George Sorenson, Deputy General Counsel – Sales Tax, dated March 5, 2001, was referred to the undersigned for a response.

Department regulations require that the Department issue only two types of letter rulings, Private Letter Rulings (“PLRs”) and General Information Letters (“GILs”). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department’s website. That address is www.revenue.state.il.us/legalinformation/regs/part1200. The nature of your question and the information provided require that we respond only with a GIL.

In your letter dated March 5, 2001, you stated as follows:

We represent xx which is purchasing substantially all of the assets of xx. xxxxxxxxxxxxxxxxxxxx does business in Illinois and recently filed for relief under Chapter 11 of the United States Code, 11 U.S.C. §§ 101 et seq in the U.S. Bankruptcy Court for the Northern District of Illinois as Case No. xxxxxxxx. In anticipation of closing the acquisition, on February 28, 2001 we requested a Bulk Sales Stop Order from the Illinois Department Of Revenue. However, we were advised by Alvin Wilke of the Department's Chicago office that the Department's position is that there is no need for a stop order when purchasing assets out of bankruptcy. He referred to a January 22, 1986 letter ruling, no. 86009D.

While I welcomed Mr. Wilkes' advice, I read the letter ruling and discovered that it addresses judicial and non-judicial foreclosure sales, not sales out of a bankruptcy. Although the reasoning should be the same, I called your office to confirm the Department's position.

On Friday, March 2, I spoke with Carl Betts. Mr. Betts confirmed Mr. Wilkes' advice and assured me that a Bulk Sales Stop Order was not necessary in our situation. He suggested that I could obtain a letter confirming the Department's position on this matter if I submitted a written request. Because the transaction may close prior to expiration of the 10-day period, I decided to make this request for a letter from the Department. Please confirm that a purchaser of assets from an entity in bankruptcy is not liable for the debtor's unpaid tax liability as otherwise

provided in the Illinois Income Tax Act and Retailer's Occupation Tax Act and therefore does not need to request a Bulk Sales Stop Order.

We understand that the Department's Sales Tax Legal Division has already issued a letter ruling in response to your request. This letter will address the Illinois Income Tax Act ramifications of the transaction described in your letter.

Please be advised that Mr. Wilke's prior advice to you was correct. Bulk Sales Withholding under Illinois Income Tax Act Section 902(d) is not applicable to otherwise-qualifying transfers which arise in federal bankruptcy court proceedings. As a result, the purchaser thereunder will not be liable for the debtor's unpaid Illinois Income Tax liability and need not request a Bulk Sales Stop Order. Under supremacy principles, federal bankruptcy rules supercede the IITA. The Department's interests, if any, in a particular bankruptcy case are protected by federal notice requirements.

If you have any further questions regarding this matter, please feel free to contact this office.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax